

MB 04-228

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II. Radio

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A. The Media Buying Process

Federal Communications Commission
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The purchase of commercial time on radio involves several steps that begin with developing marketing and media objectives. In the course of establishing these objectives, advertisers identify consumers who are to be targeted in the advertising campaign (see, Overview of Media Planning, Diagram A, Appendix A). The consumer target may be identified in terms of demographic variables (e.g. males, ages 25 to 54, with household incomes of \$50,000). Focusing the advertising campaign on a targeted segment of the market enables advertisers to make efficient use of their resources. Money is concentrated on buying advertising time on media patronized by people likely to consume the companies' products.

In 1997, for example, the New York Volvo dealers association adopted the following demographic profile for a media buy campaign:

Education level: college graduate plus;
Household income - \$75,000;
Age - 25 to 54.

Without stipulating race, the income and educational variables of this profile automatically disqualify radio stations that program to Black and Hispanic consumers.⁵⁹ In an attempt to win the account, Emmis Broadcasting, which programs to the Black community on WRKS-FM, conducted further research.

Emmis found that there is very little relationship between the profile adopted by Volvo and the profile of the vast majority of Volvo owners. Scarborough⁶⁰ qualitative data⁶¹ indicated that 80 percent of Volvo owners in New York City *do not* fit the profile of the Volvo dealer. Nearly 29% of New York Volvo owners were found *not* to be age 25 to 54; over 60% had household incomes *less* than \$75,000; and nearly 65% did not graduate from college. The station provided evidence that the amount of money paid for a new car by people who listen to black/urban radio is similar to the amount paid by general market station listeners. Research showed that 12.5% of urban and general market listeners pay

⁵⁹ The average household income of Blacks and Hispanics is less than Whites and Asians (see Chart B).

⁶⁰ Scarborough Reports is a division of The Arbitron Company.

⁶¹ Data for this example was supplied by Judith Ellis, Senior Vice President of Emmis Radio and General Manager of WRKS-FM. Scarborough Qualitap Target Profiles in support of the position taken by Emmis Radio are on file with CFR.

\$20,000 to \$30,000 for new cars; while 6.1% of the urban radio listeners and 7.6% of general market listeners pay \$25,000 to \$30,000 for new cars.⁶²

Emmis presented data to the advertiser's buying service that they believed showed that urban listeners fit the demographic profile of Volvo consumers. The research findings were not contested, yet they did not persuade the advertiser's buying service. After prolonged discussions, the dealer's association decided not to buy WRKS on grounds independent from the market research. The station manager reported:

We went to the buying service. They gave us a lot of time. We got to see people right up the line; the account people. They couldn't say no. It was right there in black & white; we were showing them. And then it got down to—what we were told by the buying service—was the head of the dealership who said, "I just don't want to. We just don't want it on that radio station."

...I don't believe that the criteria ever really mattered to begin with. I think to a great degree the criteria exist so that they can eliminate whoever they want to eliminate, i.e. the Black stations. And they buy whoever they want.⁶³

As an example of "no Urban dictates," Ms. Ellis also reported that the luxury car manufacturer BMW refused to buy advertising time on urban radio stations in New York, including WRKS-FM and WBLS-FM.⁶⁴ The company chose not to advertise on these stations despite qualitative research that showing that Black adults, aged 25 to 54, account for 46 percent of the people who own or lease BMWs in New York.⁶⁵

While it is normal business practice for advertisers to identify a target market, factors other than market research frequently influence the selection of radio stations that will be part of the media mix. This study has identified seven reasons related to ethnic identity and economic status that may account, at least in part, for "no Urban/Spanish dictates" and "minority discounts:

- ▶ racial/ethnic minority consumers are incorrectly stereotyped as inappropriate for certain luxury products or services;
- ▶ stations that program to minority listeners are excluded based on average listener income, regardless of data about consumption patterns
- ▶ the desire to disassociate a company's image from minority consumers;
- ▶ language barriers, in the case of Hispanic radio;

⁶² Scarborough Qualitap Reports on file with CFR.

⁶³ Interview with Judith Ellis, Emmis Broadcasting, pages 14 - 15. (emphasis added).

⁶⁴ Telephone interview with Judith Ellis, Emmis Broadcasting, August 10, 1998.

⁶⁵ Scarborough Qualitap Report, New York, March 1997- February 1998 on file with CFR.

- ▶ unfounded fears that minority consumers pilfer;
- ▶ media buyers' unfamiliarity with the consumer habits of minorities;
- ▶ efforts by broadcasters and/or their national sales representatives to discourage advertisements on minority-formatted stations; and
- ▶ the belief that minorities can be reached through the general media.

It is noteworthy that in the interviews conducted for this survey, lack of responsiveness to ads on urban and Spanish stations was not raised as a reason for not placing ads there. The factors listed above were predominant in the experience of the broadcast and advertising professionals interviewed. Further research should investigate response rates to ads in minority and general format stations, and their impact on "no Urban/Spanish dictates," "minority discounts," and ad placements.

In the following section, explanations for imposing "dictates" and "discounts" are further explored.

B. "No Urban/Spanish Dictates" and "Minority Discounts"— What Are They & Why are They?

In order to gain a better understanding of industry practices, CRF conducted twenty-one in-depth interviews⁶⁶ and surveyed General Managers at minority-owned broadcast stations with a written questionnaire.⁶⁷ The next two subsections present findings based upon these research efforts.

1. No Urban/Spanish Dictates Examined

The term "no Urban/Spanish dictates" is industry jargon for the practice of prohibiting the placement of ads on stations that have an urban or Spanish⁶⁸ format. In this study the terms "dictates" and "no Urban/Spanish dictate" are used interchangeably. "Minority discounts" refers to the practice

⁶⁶ A list of the individuals interviewed is provided in Appendix C.

⁶⁷ The questionnaire was completed by 64 of 284 (or 22.5%) of the minority-owned radio stations. The survey instrument and the consolidated results are provided in Appendix J.

⁶⁸ Data collected by this study indicate that "dictates" are frequently imposed upon stations that air programming targeted to either Blacks or Hispanics. Interviews with the following media executives provided evidence of dictates imposed upon Spanish-formatted stations: Tom Castro, Chairman & President of El Dorado Communications; Luis Alvarez, Local Sales Manager, WSKQ, Spanish Broadcasting Systems; Carey Davis, General Manager, WSKQ, Spanish Broadcasting Systems; Roman Pineda, President of Caballero Media; and David Lykes, President of Heftel Broadcasting. The U.S. Department of Commerce has identified only four Native-American radio licensees. Only one, KTNN-AM, responded to the survey questionnaire circulated by this study stating that it had *not* encountered a "dictate," but that "some advertisers in minority [Navajo nation] border towns have been telling us they aren't interested in Navajo business," Survey of Tazbah McCullah, General Manager, KTNN-AM.

of buying time on a minority-formatted station at a rate that would be less than what is paid to a general market-formatted station with comparable audience size.

Occasionally an advertising agency will expressly indicate that its client has a "dictate" or policy not to buy advertisements on urban or other minority-formatted stations. Sherman Kizart, Director of Urban Marketing at Interep in Chicago which represents radio stations soliciting ads from national advertisers and their ad agencies, recounted that he "routinely" runs into these exclusionary practices.⁶⁹ The Dallas Morning News quoted Kizart regarding the distribution of ad dollars in the radio industry:

When mapping out marketing plans, major advertisers and ad agencies sometimes specify what are called "no-Urban" dictates, Mr. Kizart says. That means no black-oriented stations are to be included when ads are purchased.

I just got off the phone with an advertising agency where I had to deal with it, where there was a no-Urban dictate for a specific car brand' that is beginning a national radio campaign, Mr. Kizart says. He wouldn't name the agency or the automobile company.⁷⁰

Kizart observed that "there is often 'no rhyme or reason' for the exclusion of black-oriented stations in marketing plans."⁷¹

Kernie Anderson, General Manager at WBLS-FM in New York, an African-American owned station offering urban-formatted programming, reported that "the reality is that there are still a significant number of accounts that regularly tell our salespeople 'no urban dictates,' which translates into saying that clients refuse to buy time on minority-oriented stations."⁷²

Judith Ellis, Senior Vice President of Emmis Broadcasting, a majority broadcasters with an urban formatted station in New York, echoed the sentiments of Mr. Anderson, "There is one ad agency that told our account executive that Black people do not buy linens when there was a Wamsutta linens buy. I could go on and on about this."⁷³

⁶⁹ John Kirkpatrick, *Making Waves: Concern over Distribution of Ad Dollars Stirs Up Radio Industry*, ("Making Waves"), The Dallas Morning News, June 28, 1998, 1H; 1998 WL 13084258.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Kendall Wilson, *Many Outraged by Agency's Snub of Minority Radio*, The Philadelphia Tribune, May 19, 1988 1A; 1998 WL 11493873.

⁷³ Interview with Judith Ellis, Emmis Broadcasting, page 13.

Cheryl Womack, Local Sales Manager for KJLH-FM in Los Angeles, a minority-owned, urban formatted station, heard an airline's ads on other radio stations in the Los Angeles market.⁷⁴ She approached the airline's advertising agency about buying ad time on KJLH. The ad agency told her the client was "not buying urban stations."⁷⁵ Later, KJLH secured an ad for that airline through a national buying service, which seeks bulk national ad placements for clients. Ms. Womack did not know whether the ad placement resulted from a change in strategy by the client, or the difference in advertising agencies. She suspected that the ad agency's perspectives had a great influence on the original refusal to consider their urban station.⁷⁶

Katz Media, a firm that represents broadcasters selling air time to advertisers, was lambasted on ABC Radio's "Tom Joyner Morning Show"⁷⁷ for a memo the firm authored coaching sales people on ways to pitch time on general market stations against minority-formatted stations.⁷⁸ The memo said that urban stations fared poorly in delivering "prospects, not suspects."⁷⁹ Stu Olds, President of Katz Media, appeared on the May 15 show to discuss the memo.⁸⁰

MediaWeek reported that a week later, Olds met privately with Joyner and co-host Tavis Smiley to discuss what Katz should do in the wake of the memo. Olds promised to hire more minorities at Katz. He also pledged to "personally call on 20 companies both parties agreed had a 'no urban dictate'—meaning they have a policy against advertising on black stations—and pitch his black station clients to them himself."⁸¹ Though Olds and Joyner would not specify which companies were identified,⁸² their agreement confirms that media executives such as Olds recognize that "no Urban dictates" are a current marketplace reality.

⁷⁴ Telephone interview with Cheryl Womack, Local Sales Manager, KJLH-FM, November 13, 1998.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ "The Tom Joyner Morning Show" is the most highly rated urban-formatted morning show in the country. See, *Ratings Racism: When No. 1 is Not*, ("Ratings Racism") MediaWeek, June 22, 1998, 1998 WL 10320344.

⁷⁸ *Id.*

⁷⁹ See Katz memo, page 12, (on file with CFR).

⁸⁰ See also, Letter from Stu Olds, May 26, 1998, apologizing for the language and tone of the Katz memo and referring to the discussion of it on the "Tom Joyner Morning Show," (on file with CFR).

⁸¹ *Ratings Racism*, MediaWeek, June 22, 1998.

⁸² *Id.*

Dictates against advertising on minority targeted radio have deep roots. The FCC released a report in 1978 on its minority broadcast ownership conference.⁸³ The report discussed advertising practices as a barrier to minority ownership:

It appears, however, that black stations are often told that time will not be bought in advance of the "buy," notwithstanding their numbers. [Advertising] (a)gencies claim that their clients impose a "no ethnic" restriction on the advertising medium used due to the nature of the product. Yet, a double standard may exist even at this level, for white-owned stations with formats aimed at the Black community may not be barred from securing these ads.⁸³

These dictates appear to be based on the station's minority format, rather than individual assessments of the station's ratings, audience or technical characteristics.⁸⁴

Minority broadcasters surveyed for this study reported that they also encounter "dictates" disguised in a variety of ways. When asked if they had encountered discriminatory advertising practices that go by a name **different** from "no Urban/Spanish dictates," the survey respondents provided the following examples: "We're out of budget;" "We used the medium, but it didn't work;" "We are not buying radio;" "We can't get financing for [minority customers];"⁸⁵ "There is no money for your market,"⁸⁶ "We are not looking for that kind of audience."⁸⁷ While these may constitute legitimate reasons for not advertising on a station, the broadcasters responding to the survey indicated that the reasons provided were often a ruse.

⁸³ *Report on Minority Ownership in Broadcasting*, Federal Communications Commission, 1978, at 26. W. Cody Anderson, General Manager of WHAT-AM, reported: "In my earlier years in radio, agencies used to say 'no ethnic' advertising. Because of laws, they were prevented from doing that, but they continued to practice it. They just didn't say it." Kendall Wilson, *Many Outraged by Agency's Snub of Minority Radio*, The Philadelphia Tribune, May 19, 1998 1A, 1998 WL 11493873.

⁸⁴ The National Telecommunications and Information Administration found that in 1996, AM stations represented 50% of non-minority owned stations, but 69% of African-American owned and 80% of Hispanic-owned stations. Non-minority owners also had higher average signal power than minority owners. NTIA Minority Broadcast Ownership Report, 1996, pages 4-7. Anecdotal evidence collected indicates that FM stations with high signal power are subjected to "no Urban/Spanish dictates," see page 26 and to minority discounts, see page 34. Technical characteristics of the station are unlikely to be the selective factor for imposing dictates, particularly since they are applied across the format. Further research should examine the impact of a station's technical characteristics on advertising performance and the imposition of dictates or discounts.

⁸⁵ Survey response of Andrew Langston, CEO, and Owner of WDKX-FM.

⁸⁶ Survey response of Preston Brown, General Manager of WCLM - FM.

⁸⁷ Survey of Manuel Davila Jr., Owner, and General Manager of KBSO-FM, KCCT-AM, and KFLZ-FM.

Migdalia Colon, Vice President of the Spanish-formatted station WCUM-AM said she was once told, "*We are not doing ethnic stations.*"⁸⁸ On another occasion she was told that her market was not included in a promotion, "*but then we would hear their product on all the Anglo Stations in our market.*"⁸⁹

Of those minority broadcasters responding to the survey, ninety-one percent indicated that they had encountered a "no Urban/Spanish dictate" at least once from the advertising agencies or advertisers from which they solicit business. An average of 26 "dictates" were reported to be encountered annually.

Urban stations that are clients of The Interep Store regularly report to the company incidents that they believe constitute "no Urban dictates."⁹⁰ Interep routinely investigates such reports and contacts advertisers in order to verify them.⁹¹ If Interep encounters reluctance or a refusal on the part of an advertiser to place ads on urban-formatted stations, the national rep firm will attempt to "turn around" the "dictate" with market research that justifies such a buy. In rare instances, according to Interep executive Stewart Yaguda,⁹² do advertisers maintain a dictate after being presented with such research. Interep's Sherman Kizart reported to The Dallas Morning News:

'The excuse I hear is that the clients are looking for 'upscale,' and implying that African-Americans aren't upscale...My job is to turn around these no-urban dictates. There are a lot of negative perceptions that unfortunately exist about the black consumer market and their viability'... including 'lack of money, lack of education, lack of professional jobs.'

*The only way to change that... is 'by giving people the right information' - a tactic that often works, he says.*⁹³

Contrary to this view, the minority broadcasters responding to CRF's survey indicated that in most instances there is either no response or a continued refusal to buy after market research is presented to advertisers or ad agencies (see page 38).

The study was not able to investigate advertisers' reasons for "no Urban/Spanish dictates" because of funding limitations. The anecdotal evidence collected suggests minority broadcasters and professionals working in the format believe they may be based, at least in part, on stereotypes based

⁸⁸ Survey response of Migdalia Colon, Vice President of WCUM-AM.

⁸⁹ *Id.*

⁹⁰ Stewart Yaguda, President of Radio 2000, a division of The Interep Store.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Making Waves*, The Dallas Morning News, June 28, 1998.

on the race or ethnicity of the station's audience.⁹⁴ Dictates could also be a short-hand way of excluding unlikely customers, based on perceptions of their purchasing power, consumption patterns or other factors.

Blanket dictates based on a station's format preclude a broadcaster from competing for the advertisement of the goods or service. While it may save resources for an advertiser or its ad agency to exclude an entire class of stations from consideration so they can focus on others, this practice has profound implications. Rather than evaluating a station based on its individual merits—its rating, its particular audience characteristics, the price of ads—the station is excluded based on its minority format.

To the extent that dictates are based on the race, ethnicity or national origin of the broadcaster's audience, one could argue that such practices amount to an attempt to avoid having minorities as customers. In certain areas, such as housing and public accommodations, Congress has enacted legislation stating that businesses cannot limit their customers based upon race, color, or national origin.⁹⁵ Indeed, in the housing area Congress has recognized that advertisements which convey a message that certain groups are not welcome are detrimental to our society and contrary to public policy. Thus, the Fair Housing Act explicitly prohibits the publication of any "advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin . . ." 42 U.S.C. § 3604(c).⁹⁶ While there are no similar statutes prohibiting advertisers from selecting stations on the basis of race, the public policy concerns here are similar to those motivating various anti-discrimination statutes. Specifically, these policies would suggest that stations should be evaluated on the basis of their

⁹⁴ See, Section II-B-3.

⁹⁵ See, Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a; Fair Housing Act, 42 U.S.C. §§ 3604 *et seq.* Title II prohibits discrimination on the basis of race, color, religion, or national origin in the provision of public accommodations such as hotels, restaurants, and places of entertainment. The Fair Housing Act prohibits, among other practices, discrimination in the sale or rental of housing, on the basis of race, color, religion, sex, familial status, handicap, or national origin. Moreover, judicial cases interpreting the Fair Housing Act's prohibitions have recognized that discriminatory intent need only be one motivating factor for the conduct. See, *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977); *United States v. City of Parma*, 661 F.2d 562, 575 (6th Cir. 1981), *cert. denied*, 456 U.S. 926 (1982) ("There is no requirement that such intent be the sole basis of official action"). See also, *United States v. Scott*, 788 F. Supp. 1555, 1562 (D. Kan. 1992) ("[w]hether motivated by animus, paternalism, or economic considerations, intentional . . . discrimination is prohibited by the [Fair Housing] Act.").

⁹⁶ See also, *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898 (2d Cir. 1993). Congress decided that the prohibition on discriminatory advertisements was so important that small housing providers who are otherwise exempt from the Fair Housing Act's prohibitions, (the so-called "Mrs. Murphy exemption"), are still subject to the provision prohibiting discriminatory advertisements (see, 42 U.S.C. § 3603(b)).

individual merit—ratings, particular audience characteristics, prices —rather than being excluded on the basis of the race of their listeners. “No Urban/Spanish dictates” appear to prevent broadcasters serving the minority community from obtaining ads in the same way that exclusionary policies by hotels or real estate agents prevent minorities from obtaining services. This has implications for competition, fundamental fairness and service to the public.

2. Minority Discounts Examined

“Minority discounts” are based upon discrepancies in the rates paid to comparable minority-formatted and general market-formatted stations. The difference may be based upon the amount of “cost per point” paid to such stations. The general market cost per point is the rate that advertisers pay to reach one percent of the entire population in an Arbitron metro market (see Glossary and Overview of Media Planning in Appendix A). When a minority discount is used, a minority-formatted station is compensated at a lower rate than the general market cost per point, even though it may have more or the same number of listeners than a general market station.

For example, a well-known bedding and mattress retailer reportedly offered to buy time on on WRKS-FM and WQCD-FM in New York. Both stations are owned by Emmis Radio. The urban-formatted station, WRKS, was offered a general market cost per point of \$330 while the general market station, WQCD, was offered a general market cost per point of \$365. The urban station had a larger market share than general market station. Moreover, data on consumer buying habits indicated that urban listeners were more inclined to purchase bedding products (*see*, page 86 regarding telephone interview with Judith Ellis).

Advertisers interested in targeting their products to minority consumers often pay minority-formatted stations on the basis of the Hispanic cost per point or the Black cost per point. These rates are based upon the cost of reaching one percent of the Hispanic population within the metro market (*i.e.* the Hispanic cost per point) or the cost of reaching one percent of the Black population within the metro market (*i.e.* the Black cost per point). A comparison of the Black cost per point and the general market cost per point indicates that in some markets the Black cost per point is higher, reflecting the more targeted nature of the audience. (*see*, Table 5). However, advertisements purchased on the basis of the Black cost per point are estimated to comprise only a small fraction of the buys on urban radio stations⁹⁷ (*see*, Section II-C-2-d).

Minority discounts also occur when advertisers insist on paying less than the minority-formatted station’s rating or audience demographics would indicate. For example, according to a Spanish Broadcasting System sales executive:

[Media buyers] don't ask for your rate card....They tell you what the Hispanic cost per point is. When comparing certain Hispanic costs per points to [what] the general market cost per point are, the cost per point that they are quoting you is much lower....[J]ust this morning a sales person was in here talking to me about a

⁹⁷ Interview with Sherman Kizart, Director of Urban Marketing, The Interep Store, October 1, 1998.

\$45 cost per point which is ridiculously low. But it's not the first time I've heard that... A general market cost per point is around \$280, which translates basically to they are trying to have us come in at a \$45 cost per point when the average [Hispanic] cost per point is \$75.⁹⁸

Minority broadcasters interviewed for this study reported that "minority discounts" account for a substantial amount of lost advertising revenues. Carey Davis, General Manager of two Spanish formatted stations in New York, estimates that "minority discounts" account for 25% of the lower amount of revenues earned by his stations.⁹⁹ Spanish-formatted WSKQ-FM, which Davis manages, was ranked number two in the New York market in 1997. Its 6.1 local commercial share (audience size), represented a much larger audience than the two general market stations, WCBS-FM and WXRK-FM, with local commercial shares of 4.6 and 5.5, respectively. Despite their smaller listening audience, the two general market stations earned \$34.8 million and \$37.3 million, compared to \$21.5 million for WSKQ.¹⁰⁰ The power ratios reflected these differences: 0.72 for WSKQ, 1.14 for WCBS, and 1.61 for WXRK.¹⁰¹

Minority broadcasters responding to CRF's survey estimated that 61% of their sales transactions were reduced by "discounts." The amount of the "minority discount" was estimated to average 59%.

Kearnie Anderson, General Manager of minority-owned, urban-formatted WBLS-FM in New York City, said that minority-owned stations have to work harder for the dollars they earn. He said his station does more promotions of events in its local market than its competitors do. He believes they have to offer the advertiser more "value-added" benefits through promotions, such as events outside of air time, to get a sales dollar.¹⁰²

3. Rationales for "Dictates" and "Discounts"

Advertiser avoidance of media outlets based on the ethnic identity of the audience would appear to contradict the natural inclination to increase customer patronage and sales. However, product image control, lack of knowledge, and stereotypical views about minority consumer habits may be a few factors that explain the reason for "dictates" and "minority discounts."

⁹⁸ Interview with Luis Alvarez, Local Sales Manager, WSKQ and WPAT pages 5 - 6.

⁹⁹ Interview with Carey Davis, General Manager, WSKQ-FM and WPAT-FM, (Spanish Broadcasting System), page 8.

¹⁰⁰ 1998 BIA MasterAccess database.

¹⁰¹ 1988 BIA MasterAccess database.

¹⁰² Kearnie Anderson, WBLS General Manager, telephone interview, November 12, 1998.

As part of the survey analysis, minority broadcasters were asked to rate several explanations for “dictates.” Most broadcasters responding indicated that they believed “dictates” were based upon “faulty evidence that there is no ethnic market demand for the goods or services.” The “desire to avoid minority patronage” and “legitimate rationale based upon market research” were rated five and six, respectively, on a scale of one to ten, with one being the highest level of importance and 10 being the lowest. In the following table the responses in column two represent the average rating provided by the survey respondents.

| Question: To what extent are “no Urban dictates” based upon the reasons listed below? | Average Response on a scale of 1 to 10 (1 denotes the highest level of importance) |
|---|---|
| Faulty evidence that there is no ethnic market demand for the goods/services in question | 3 |
| The desire not to have ethnic minorities patronize the goods/services | 5 |
| Legitimate reasons based upon evidence that the ethnic minority market does not purchase the goods and services | 6 |

In the interviews conducted by CRF, explanations for “minority discounts” and “dictates” included perceptions of insufficient income, image control, fear of pilferage, unfamiliarity with the market, and stereotypical views about minority buying habits. Byron Lewis, Chairman and CEO of UniWorld Group, America’s largest independently-owned ethnic advertising agency, characterized advertisers as having the following misperceptions about the African-American market:

Lewis: *[H]istorically, the advertisers have assumed that based upon census data, African-Americans earn less money, have less median income than their mainstream customers. So, therefore, they believe that certain types of purchases — particularly upscale — they really do not consider African-Americans as customer targets for many product categories. So, for example, very few insurance companies advertise to Blacks. Banks, financial services, luxury items like credit cards, tourism destinations—the whole area of product advertising feel that Black people are not, because of income and professional background and education, suitable targets to advertise to. That is a general attitude toward the African-American consumer market.*

Ofori: *Do you believe that’s an accurate perception?*

*Lewis: No, I don't believe its an accurate perception. But it's an historic perception.*¹⁰³

The view that minority household income is strongly associated with reluctance on the part of advertisers to target advertising to Blacks and Hispanics is consistent with the quantitative findings presented in Section II-C. A comparison of general market and minority-formatted stations indicates strong linkages between low household income, high levels of minority listenership, and minority targeted programming. (See, Charts H-I, page 69).

As explained earlier, the media buying process seeks to use advertising dollars in the most efficient manner possible. Based upon market research, the audience demographic most likely to buy the product or service is identified and targeted for a media ad campaign. Or, the marketing objective may be to expand the company's consumer base, in which case the advertiser will target ads to consumers who haven't purchased its products in the past. However, even where market research identifies minoritized as heavy or moderate consumers and the advertiser's marketing objective is not focused upon expanding the consumer base, survey respondents reported that advertisers were often reluctant to include minority-formatted stations in their advertising campaigns.¹⁰⁴

Consistent with the example of the New York Volvo dealers association, media buyers with a "no Urban/Spanish dictate" were reported to have either "no response" or a "negative response" to market research that demonstrates minority patronage of the brand. Rated closely behind these choices was the response that there is a "long lapse of time between when the research is acknowledged and when the account is granted." The table below summarizes the experiences of minority broadcasters responding to the survey when they presented market research to media buyers in an effort to overcome a "no Urban/Spanish dictate."

| Question: If an advertiser or advertising agency is presented with research that contradicts their "no Urban dictates" policy which of the following best describes the response? | Average Response on a scale of 1 to 10 (1 denotes the highest level of importance) |
|--|---|
| No response | 3 |
| The research is acknowledged, but the agency or advertiser still refuses to grant the account. | 3 |
| The research is acknowledged, but there is a lapse of a long period before the account is granted. | 4 |
| A rescission of the policy and an account is acquired within a short period of time | 7 |

¹⁰³ Interview with Byron Lewis, Chairman and CEO of The UniWorld Group, page 4.

¹⁰⁴ See page 38, *infra*.

The reluctance to rescind a “dictate” despite market research that favors minority consumers is often due to concerns about product image and positioning. According to Byron Lewis:

In many cases, people have statistics. For example, there are categories of advertising where Blacks are the dominant customer. For example, you take liquor, the cognac category. Blacks represent 60 - 70% of the expensive cognacs, but almost never are directly targeted. Or, if you look at a lot of tourism advertising—tourism advertising for destinations like the Caribbean or other upscale places, almost never portray Blacks as a target because they feel that, in some way, it might create the impression that they’re-attempting to encourage Blacks to come to these destinations. And that this will turn off the White traveler.¹⁰⁵ There are certain products, name brands who for the longest time did not utilize Blacks in their advertising even though they knew that Blacks represented a significant part of their sale volumes.¹⁰⁶

Some luxury car manufacturers expressed concerned about ethnic stigmas:

Domestic, I’d use the case of Cadillac. And [internationally,] Mercedes Benz, BMW because we can show there probably is a better market among upscale and upwardly mobile African-Americans with foreign cars. But the issue is, the projection in the media is always upscale, young professional and professional, White audiences. This is the general approach. Not that there aren’t exceptions. But that has been historically the case.¹⁰⁷

Ken Smickle, President and Publisher of Target Market News, also addressed the issue of image:

¹⁰⁵ To the extent that “no Urban/Spanish dictates” may be based on concerns that White customers will not buy the product or service, or patronize the business or location if it is associated with minorities, case law in the housing and employment area has stated that concerns about the preferences of customers do not justify excluding others based on race, ethnicity or gender. See, for example, *Diaz v. Pan Am World Airways*, 442 F.2d 385, 389 (5th Cir.1971), *cert denied*, 404 U.S. 950 (1971) (holding that customer preference for female flight attendants does not permit airlines to refuse to hire males). See also, *United States v. Starrett City Assoc.*, 840 F.2d 1096 (2d Cir.) *cert. denied*, 488 U.S. 946 (1988) (fear of “white flight” did not justify policies limiting number of minority tenants).

¹⁰⁶ Interview with Byron Lewis, The UniWorld Group, page 6.

¹⁰⁷ *Id.*

It's all image. So, Rolls Royce or even a Japanese luxury car maker have reams and reams of research that would tell them what the American car buyer with a lot of money to spend on a car thinks about themselves, their own self image, etc. And Black folks don't factor into the equation at all. "So, what on Earth would this person think if they ever saw an ad with a Black person driving our car?" That would diminish the value of the car because they're not seeing themselves behind the wheel.¹⁰⁸

Concerns about product image are reported to extend beyond luxury items to the need to assuage White perceptions about the intended market for ordinary products and services:

We're talking about an image business where everything is image; your positioning, who you are, the difference between your product benefits, in what it offers versus what your competitor offers. It's all a matter of perception. And that perception comes from tightly controlled images about that product, about the company behind that product. And, race again plays a big factor in the thinking of how the product will be perceived. JCPenney had a huge success a few years ago in establishing these Afrocentric boutiques on its selling floor at a number of its stores. These boutiques would carry things like Black greeting cards, like books, Kente clothes or items made from Kente cloths, African art and artifacts. And these shops were set up just prior to the Christmas selling season. When the Christmas season was over, every single one of those boutiques had sold out of everything they had in an unqualified success. They never repeated the program. The reason they didn't repeat the program, it's widely felt, is because they couldn't control the industry buzz, talk, news stories and perceptions that surrounded the entire thing. They had a picture in Time Magazine, a full page color picture of a woman in an African dress and the caption said "Dress came from JCPenney." And I could just hear the Penney executives now. "Every White person in America is going to think we just became a Black store." And that's the problem.¹⁰⁹

EPM Communications, Inc. recently published an article that discussed reticence on the part of fragrance companies to target-market their products to minorities:

While major fragrance companies obviously want the business of minority consumers, they don't want to be perceived as making ethnically targeted scents, despite the fact that market research suggests that regional and cultural preferences exist.¹¹⁰

¹⁰⁸ Interview with Ken Smickle, President and Publisher of Target Market News, page 15.

¹⁰⁹ *Id.*, at 15.

¹¹⁰ *Marketing Fragrance to Minorities is Lucrative But Not Specialized*, Minority Markets Alert, EPM Communications, Inc., October 1998 (see, Appendix E).

In addition to product image control, media executives cited lack of familiarity with the Black and Hispanic market¹¹¹ and a reluctance to obtain reliable data,¹¹² as factors contributing to stereotypical views about the minority consumer. Recalling his early experiences as a radio salesperson, Luis Alvarez of WSKQ said:

*I recall being in front of a buyer and we were discussing at the time Ivory Soap and the buyer was telling me they were not going to buy the station. And the question was, "Why not?" And they said, "Well, we have studies that show that Hispanics don't bathe as frequently as non-Hispanics." And as you could see there were no studies that I've knew of, whether it be at the time Yankelovich, Skelly & White or Scarborough or Simmons that referred to that.*¹¹³

On another occasion, Mr. Alvarez recalls:

*[T]he account supervisor for a major car manufacturer says to me, "Come on guys. You know we're wasting our time here." And I said, "How's that?" He says, "You know the Hispanics don't buy or lease cars." And I looked at him and I said, "Well, that's funny because my wife drives a Lincoln Towncar. And I've got a Mark VII." And he says, "And?" And I said, "And my name isn't Luigi Baccagalupi. It's Luis Alvarez." And this guy turned all colors. All colors. We wound up walking out of there with a buy, by the way. I think out of embarrassment.*¹¹⁴

Mr. Alvarez was confronted with these stereotypes despite the fact that in 1997 WSKQ-FM was the No. 2 station in New York in terms of number of listeners. During 1997 WSKQ had a power ratio of 0.72.¹¹⁵ In 1998, WSKQ was ranked number one.¹¹⁶

A similar pattern occurred in Los Angeles. Spanish format KLVE-FM was the market leader by a wide margin, with a local commercial share of 7.2, compared to 5.4 for its nearest competitor in

¹¹¹ Interview with Roman Pineda, President of Caballero Spanish Media, a division of Interep Media Store, page 3.

¹¹² Interview with Byron Lewis, The UniWorld Group, page 6; *See also*, Interview with Judith Ellis, Emmis Broadcasting, concerning misleading sales presentations, page 23.

¹¹³ Interview with Luis Alvarez, WSKQ and WPAT, referring to incident that occurred in 1981, page 2.

¹¹⁴ *Id.* at 11.

¹¹⁵ July 1998 edition of BIA MasterAccess.

¹¹⁶ Mira Schwirtz, *Ratings Racism: When No1. Is Not*, MediaWeek, June 22, 1998.

terms of local commercial share. Yet, KLVE's power ratio was 0.62 in 1997, and it ranked 8th in revenues.¹¹⁷

Another barrier confronting Spanish radio is language. To effectively target Hispanic consumers, the copy may need to be written and delivered in Spanish, and the creative approach must appeal to this audience.¹¹⁸ These extra requirements constitute additional obstacles for Spanish radio.¹¹⁹

*It's not just being minority that's a disadvantage when you're trying to sell to some of the "Anglo" non-Hispanics. But also, that you're a minority in a different language.*¹²⁰

Lack of workforce diversity at ad agencies contributes not only to a resistance to accommodating the minority market, but to misperceptions about the minority consumer market in general.¹²¹ Pierre Troupe, an Account Executive with a Jacor Communications radio station in St. Louis said:

*[Part of the problem is] the fact that the agencies, or a good deal of the agencies here in the St. Louis market, are lily White in terms of front door to back wall, or agencies that only have a couple of Black people involved in them. So the whole idea of understanding what Black people are all about is difficult....[For example] if you're talking to a White buyer, they try to equate it to situations in their own particular culture by which young Blacks have less money and their parents do less well. When in actuality, in reality, in the Black community, wealth is held at a younger age than is held in the White population....[T]here's the underlying aspect of the stigma of young Blacks being not into serious things even to the point of being gang members and that sort of thing.*¹²²

Lack of diverse personnel in advertising agencies and companies which place ads may affect relationships with minority salespeople, minority broadcasters, and perceptions of minority consumers. Minority broadcasters tend to employ more minorities than non-minority-owned broadcasters, so they

¹¹⁷ BIA Analysis of Hispanic and Urban Formats in the Top 50 Markets, BIA Research Inc. (see, Appendix L); see also July 1998 edition of BIA MasterAccess.

¹¹⁸ See, Interview with Roman Pineda, Caballero Spanish Media, page 6.

¹¹⁹ Interview with David Lykes, Chief Operating Officer of Hefel Broadcasting, page 5.

¹²⁰ Interview with Luis Alvarez, WSKQ and WPAT, page 2.

¹²¹ Interview with Tom Castro, Chairman and President of El Dorado Communications, page 12.

¹²² Interview with Pierre Troupe, Account Executive, Jacor Communications of St. Louis, page 5.

may be more adversely affected by lack of inter-ethnic/racial understanding when dealing with advertisers or ad agencies.¹²³

Consistent with the view that race and ethnicity are key factors in the media buying process, minority broadcasters rated "minority-targeted format" number two on a scale of one to ten as the most important basis for "no Urban/Spanish" dictates. "Audience income" received an average score of four followed by "audience age" and "station ownership by a minority," both of which scored an average of six.¹²⁴

¹²³ See, NTIA Minority Ownership report, 1997. The Supreme Court noted in *Metro Broadcasting* that, "In 1981, 13 of the 15 Spanish-language radio stations in the United States owned by Hispanics also had a majority of Hispanics in management positions, while only a third of Anglo-owned Spanish-language stations had a majority of Hispanic managers, and 42 percent of the Anglo-owned, Spanish language stations had no Hispanic managers at all." 497 U.S. at 582 n. 34. Paul Milton Gold found in 1983 that 82% of Black-owned stations had African-American general managers, as compared to 27% of white-owned stations. Nearly 74% of the Black-owned stations had more than 75% African-American employees, compared to fewer than 38% of the white-owned, Black-formatted stations. *Public Interest Programming Service to Minority Communities by Minority-Oriented Commercial Radio Stations*, 1983, National Association of Broadcasters' Library, unpublished paper. Further research is recommended on the relationship between the race/ethnicity of the sales staff of minority-format stations, advertisers, ad agencies, representative firms, and a station's advertising performance.

¹²⁴ Note that the analysis of power ratios in Table 2 of Section II-C-2-c, page 79, indicates that minority owners are less able to convert their audience ratings into revenues than their majority-owned counterparts of similar size. While minority broadcasters responding to the survey believed their race or ethnicity was a less significant factor in the imposition of "no Urban dictates" than format, power ratio data indicate minority owners averaged lower power ratios than their majority counterparts of similar size.

Barthwell Evans in her study of minority broadcasters reported two instances in which advertisers canceled their ads when it was announced that the new owner of the station was a minority. While these two anecdotes do not provide direct evidence proving that the owner's race or ethnicity was a factor in the advertising decisions, the timing of the decision raised concerns in the minority owners' minds. See, "Radio Broadcasting," 8 Yale Law and Policy Review 380, 404.